EDITOR'S NOTE

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86 1504

NO.

in the

Supreme Court

of the

United States

October Term, 1986

STANLEY TRANOWSKI,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT. (Re: Judgment Order 86-1649)

STANLEY E. TRANOWSKI
Petitioner Pro Se

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5171 WEST ST. PAUL AVE.
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(312) 237-2705

QUESTIONS PRESENTED FOR REVIEW

1. WERE THE PETITIONER'S CONSTITUTIONAL RIGHTS VIOLATED UNDER THE PROVISIONS OF THE SIXTH AMENDMENT TO THE CONSTITUTION BY THE GOVERNMENT'S DELIBERATE SUPPRESSION OF VITAL EXCULPATORY AND IMPEACHING DOCUMENTS AT TRIAL WHICH PREVENTED HIM FROM ATTACKING THE CREDIBILITY OF TWO IMPORTANT PROSECUTION WITNESSES TO SHOW POSSIBLE BIAS OR INCENTIVE TO SUPPORT THE PROSECUTION'S CASE ?

2. DID THE PETITIONER HAVE A RIGHT TO MOTION THE DISTRICT COURT TO RECUSE ITSELF FROM HEARING THE 2255 MOTION BASED ON THE OPEN ALLEGATIONS OF BIAS AND JURY TAMPERING THAT WAS GIVEN SUPPORT IN THE ORIGINAL TRIAL RECORD ?

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1986

STANLEY E. TRANOWSKI,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, STANLEY E. TRANOWSKI, respectfully prays that a Writ of Certiorari issue to review the opinion, judgment and order of the United States Court of Appeals for the Seventh Circuit in Case No. 86-1649.

OPINIONS BELOW

There are three (3) separate and distinct Orders entered in regards to this litigation arising from the Circuit Court of Appeals for the Seventh Circuit; and two (2) Orders from the District Court. All the Orders are unpublished.

The first unpublished Order was entered in No. 78-1272, affirming the Jury Trial verdict. (Exhibit "FIVE"). The second unpublished Order was entered in No. 85-1599, which revered and remanded the District Court's decision to grant a new trial, predicated on various allegations cited in a 2255 motion, for further analysis in light of a recent United States Supreme Court decision (i.e., United States v. Bagley, 105 S. Ct. 3375 (1985). (cf: Exhibit "THREE" to Exhibit "FOUR"). Thereafter, the District Court reversed its former decision to grant a new trial in light of Bagley, supra (Exhibit "TWO"). On appeal, The Circuit Court affirmed the District Court's finding. (Exhibit "ONE").

A Petition for Rehearing was filed, and subsequently denied on 12th DECEMBER 1986. (Exhibit "ONE")

JURISDICTION

Petitioner comes under 28 U.S.C.S., Section 2101 (c) since a Motion 2255, 28 U.S.C., is civil in nature.

The Seventh Circuit Court of Appeals denied a rehearing in the above cited case as of December 12th, 1986, as per Exhibit "ONE".

This Court in United States v. Healy, 376 U.S. 75 (1964) held that the time for filing a Petition for Writ of Certiorari does not run until the court of appeals has disposed of the Petition for Rehearing.

Accordingly, the ninety (90) day rule applies in the instant case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The constitutional provision involved in this case is as follows:

UNITED STATES CONSTITUTION, SIXTH AMENDMENT.

The statutory provisions involved in this case are as follows:

FEDERAL RULES OF CIVIL PROCEDURE, RULE 52 (a) (as modified April 29, 1985)

FREEDOM OF INFORMATION ACT, (FOIA) 5 TITLE U.S.C., sec. 552 (a) (b)(2) (b) (7)

STATEMENT OF THE CASE

A: Procedural History

Petitioner was tried and convicted on a single count in violation of 18 U.S.C., sec. 472. He received a six year sentence. On direct appeal his case was affirmed from the Bench. (Exhibit "FIVE"). While incarcerated Petitioner received documents through his FOIA lawsuit, which showed that the Government intentionally suppressed vital impeaching and

exculpatory documents, which could have been used to impeach the only purported eye-witness one PETER MC GHEE, and immediately filed a 2255 petition. Prior to a limited evidentiary hearing held in March, 1985, since the Government denied that the FOIA documents were never denied prior to or during trial, a deposition was ordered of Petitioner's former court-appointed attorney, Mr. RICHARD KUHLMAN. Said deposition was held on September 26, 1984, at the U.S. Attorneys Office in Chicago. Attorney KUHLMAN testified that he had no independent memory that the documents were ever given to him at any time. At the evidentiary hearing the District Court Judge held, over the protestation of the Government, as he did before the hearing, that the Government suppressed the vital, impeaching documents, denying a fair trial to Petitioner, and ordered a new trial. The Government appealed and falsely stated that only a single document i.e., the COZZA REPORT OF '74, was at issue. The Circuit Court of Appeals reversed and remanded in light of This Court's decision in United States

v. Bagley, 105 S.Ct. 3375 (1985). (Exhibit "THREE"). On remand the District Court reversed its order of a new trial. (Exhibit "TWO"), and dismissed the 2255 petition. On appeal the Circuit Court affirmed the District Court findings, but did not go into the substance of the other allegations raised in the 2255 motion in the District Court, while agreeing that Petitioner had a right to get an adjudication on them, in spite of the Government's assertion that those issues were waived in the District Court and on appeal.

REASONS FOR GRANTING CERTIORARI

1. THE GOVERNMENT'S DELIBERATE SUPPRESSION OF VITAL EXCULPATORY AND IMPEACHING DOCUMENTS IMPROPERLY PROHIBITED PETITIONER FROM ATTACKING THE CREDIBILITY OF TWO IMPORTANT PROSECUTION WITNESSES TO SHOW POSSIBLE BIAS OR INCENTIVE TO SUPPORT THE PROSECUTION'S CASE, IN VIOLATION OF THE SIXTH AMENDMENT.

ARGUMENT

The decision of the Court of Appeals for the Seventh Circuit should be reviewed by this Court to resolve all doubt as to the application of the Bagley decision as it is applied to 2255 motions (United States v. Bagley, 105 S. Ct. 3375 (1985), as it comes in conflict with This Court's recently revised version of Rule 52 (a) 28 U.S.C., as amended by This Court on April 29, 1985. (cf: Anderson v. Bessemer City, __U.S.__ 105 S. Ct. 1504 (1985).

The Seventh Circuit Court's panel decision readily overlooks the central issue raised in petitioner's 2255 motion, and which distinguishes his case from the important principle facts held in Bagley, supra. We are not dealing with a single suppressed portion of a document in this case as was the argument raised in Bagley. Rather, as was shown at the evidentiary hearing held on March 4th-11th, 1985, there was a presentation of at least fifteen (15) suppressed

FOIA (i.e., Freedom of Information Act) documents that were intentionally withheld by the Government which could have been utilized in a vigorous cross-examination of the only purported eye-witness ---PETER MC GHEE, a 13 year old boy, who has a bad left eye and had to wear corrective glasses for proper vision; and yet, was not wearing those glasses at the time of his confrontation with the suspect. The Government had never surrendered those suppressed FOIA documents either prior to, or during the course of Petitioner's jury trial. (Furthermore, the prosecution subsequently also suppressed those same incriminating documents in the related trial of Petitioner's brother.) (See: United States v. Tranowski, 659 F. 2d 750 (7th Cir. 1981), and as was pointed out by counsel at the evidentiary hearing held on March 4-11th, 1985, and also by deposition by Petitioner's trial counsel. (See: 3 TR. Vol. 11, pp. 94-95).

On the several appeals before the Seventh Circuit the Government argued about a single document, THE COZZA REPORT OF '74, whereas in actuality the "Cozza Report" merely served as the catalyst to ressurrect other suppressed documents which could have been utilized not only to impeach witness PETER MC GHEE, but also his only corroborating witness, ROBERT PUSELLO (his "Boss") who denied unequivocally that he had no prior contact with the Chicago Police, or the United States Secret Service concerning matters of the case prior to January, 1975, whereas suppressed documents readily showed that PUSELLO was interviewed the very same night of the crime, May 12th, 1974, and that it was PUSELLO and not MC GHEE who supplied Chicago Police and Secret Service Agent COZZA with the descriptions of the alleged suspects, in contrast with the suborned perjury that was executed in two trials. In Petitioner's trial held in 1977 and the follow-up trial of Petitioner's brother in January 1980, PUSELLO denied from the witness

stand his prior involvements in the case, because there are strong showings from the suppressed FOIA documents that PUSELLO was a police informant at that time.

On remand, after the District Court had initially allowed a new trial on the evidence presented at the 2255 hearing held on March 4-11th, 1985, the Seventh Circuit Second-guessed the importance of the COZZA REPORT OF '74, in which Police Officer ROBERT BISWURM, by the statements of facts given to him by witness PETER MC GHEE, telephoned Secret Service Agent JOHN M. COZZA in October 1974, and informed him as to where the alleged "suspect" lived. Thus, witness MC GHEE placed the Secret Service on the doorstep of one STANLEY SIKORA, who became such a prime suspect in the case that the Secret Service conducted an in-depth investigation, and round-the-clock surveillance of the SIKORA residence for a period of six (6) months; had SIKORA's picture pulled from the Rogues Gallery of the Chicago Police Department, and submitted it in a picture show-up to the various crime victims.

In fact, MC GHEE initialed the picture of STANLEY SIKORA; and emphatically denied that he did so at the evidentiary hearing held on March, 1985.

Petitioner's jury had a right to know about STANLEY SIKORA with all of its investigative ramifications ---led to the Secret Service as a suspect in the case by witness PETER MC GHEE. Petitioner's jury was entitled, as a mere modicum of Justice to have before it for its analysis and consideration the facts of MC GHEE's bad eyesight, his numerous gleeful tailing escapades of suspects with other boys, and MC GHEE's denial from the witness stand that he discussed the crime with no one, but "only with my boss" (i.e., ROBERT FUSELLO) ---whereas in fact, later released suppressed FOIA Documents support the fact that MC GHEE committed suborned perjury in two separate trials with Government connivance.

The integrity and credibility of MC GHEE were key issues in Petitioner's case ---and that is exactly the point that the District Court took into account when he granted Petitioner a new trial on March 11th, 1985.

Likewise, at the behest of Judge GRADY in ordering a deposition to be taken of Petitioner's former court-appointed trial counsel about the suppression of the FOIA documents, in speaking of suppressed "fingerprints and palmprints" at trial, the following was asked:

> TRANOWSKI: Now, likewise, if you had known about that palmprint on one of the notes, would you have challenge the government's introduction of those bills or made them indicate whether or not they compared it to the suspects STANLEY SIKORA, IVAN FERGAN, or the other unknown passer or passers ?
>
> MR. KUHLMAN: (Attorney) Just going on the assumption, I assume that if I had known of other named suspects, I would have wanted to know if the palm prints or fingerprints that were found, if they matched the palm or the fingerprints of those suspects."
>
> (Deposition of Attorney RICHARD KUHLMAN, held September 26, 1984,p. 58 at the U.S. Atty. Office)

Because of the Government's deliberate suppression such an examination never occurred at trial. Evidence showed there was other suspects in the case.

Petitioner's trial counsel in December, 1977, was denied the right to an effective cross-examination of witnesses PETER MC GHEE and ROBERT FUSELLO, based on the Government's deliberate pre-trial and in-trial suppression of at least fifteen (15) now revealed FOIA documents (with at least a minimum of 33 documents still being suppressed in their entirety) which could have had a marked effect upon the jury's decision to convict, in violation of the Sixth Amendment.

Accordingly, the Seventh Circuit violated the revised mandate of Rule 52(a), which became effective August 1st, 1985 (after the Bagley decision of July 1985), expanding the oral testimony rule determination of the District Court to also include documentary evidence, or a combination of oral and documentary evidence.

In prior cases the Seventh Circuit held with the majority of the other Circuits that the weighing of the conflicting evidence and the credibility of witnesses was for the trial court and its findings would not be disturbed

unless they were clearly erroneous. (See: United States v. Sells, 498 F. 2d 912, 913-14 (7th Cir. 1974); Ohrynowicz v. United States, 542 F. 2d. 715 (7th Cir. 1976); Hearn v. United States, 194 F. 2d 647 (7th Cir. 1952).

In the Hearn case, supra, a panel of That Court said:

> "***Findings of fact cannot be set aside by an appellate court unless clearly erroneous. This rule applies likewise to all reasonable inferences of the trial judge.***"
>
> (Hearn, supra at p. 469)

The Hearn case is still controlling in the Seventh Circuit, --except as it applies to Petitioner. That Court never did resolve This Court's holding in United States v. Johnson, 327 U.S. 106-113 (1945) in which the Supreme Court admonished a panel of the Seventh Circuit for interferring with the findings and rejection of a District Court's decision, denying a motion for a new trial. The Johnson case is analogous to the current Bagley decision in that the Supreme Court in both cases reversed and remanded the circuit court of appeals (7th and 9th Circuits) rulings which overrode the

District Court's determination as serving as the initial fact-finding body.

Regardless of the standard that the District Court judge utilized in coming to his conclusion that Petitioner was not originally given a fair trial, his decision under Rule 52(a) should not have been disturbed, since there is ample evidence to support his conclusion. Judge GRADY heard the witnesses, analyzed the suppressed FOIA documents (in spite of the Government's repeated protestations that those documents were surrendered during the course of trial); rejected MC GHEE'S "positive identification" of Petitioner and granted a new trial. However, upon remand by the Seventh Circuit, in view of the Bagley case, the District Court judge, now double-talking himself gave credence to witness ROBERT BISWURM testimony ---a former police officer and now an attorney --- testimony which the District Court rejected at the evidentiary hearing as coming from a "faint mind", since the witness could not even remember that he had previously testified in the related case of Petitioner's brother in United States v. Tranowski, 659 F. 2d.

750 (7th Cir. 1981), in which BISWURM gave damaging evidence against witness MC GHEE.

Upon remand the District Court exercised a double-talk and double-think attitude of the purest kind in that the Court took the same passive attitude as the Circuit Court in "*** wanting this case to come to an end" and took the easy route to "second-guess" as to what Petitioner's jury would have thought. This is Judicial straining to achieve a remedy. This is not Justice, nor a clarification of the issue either under the Bagley decision or under Rule 52 (a).

2. THE SEVENTH CIRCUIT FAILED TO REACH THE CONTOURS OF THE 2255 MOTION, IN WHILE AGREEING THAT ISSUES REJECTED BY THE DISTRICT COURT CAN BE RAISED ON APPEAL, FAIL TO APPLY LAW TO THE ISSUES DEMONSTRATING THEIR REJECTION.

Beside the suppression of evidence issue raised in the 2255 motion, Petitioner also demonstrated that the District Court judge should have recused himself from hearing the 2255 motion based on personal bias and as the

trial transcript shows an improper and illegal communication transpired between a member of the jury and the trial judge while the trial was in session, outside the presence of the Petitioner or his counsel, which subsequently led to the indictment of Petitioner's brother, who served as his witness. (See: 76 CR 803, Tr. 509-510). When counsel asked the Court for clarification of the issue, the following colloque occurred:

MR. KUHLIAN: Excuse me, one question I would have, was that comment about the flowers then made by someone in the jury ? I did not realize that.

THE COURT: I have no comment about that.

(76 CR 803, Tr. 509-510)
Emphasis supplied

It might be appropriate for a sleazy politician to use the expression " NO COMMENT " but it has no place in a courtroom, if Justice is to be above reproach, and suspicion of jury tampering is to be avoided.

Under the circumstances of this case, under the 2255 mandate, there is ample authority which holds that in circumstances where the trial court has expressed personal bias, the better course of action as a means of judicial propriety is to permit another judge to hear the 2255 motion. (See: United States v. Hayman, 342 U.S. 205, 210-219, 72 S. Ct. 263, 96 L. Ed. 375 (1974).)

CONCLUSION

The deliberate suppression of the now revealed FOIA documents cannot be minimized. So vital was MC GHEE'S testimony that at the evidentiary hearing Judge GRADY, pointedly stated:

> "***But as Mr. SCHELLS (defense counsel) correctly points out, without the identification by PETER MC GHEE, there would be no case here, there would be no case for a jury. There would be merely suspicion. In fact, without the testimony of MC GHEE, there is not even a suspicion that TRAMONSKI passed the bills since no one else beside MC GHEE identified him as the passer.***"
>
> (3 TR 54, Vol. 3, transcript of Evidentiary Hearing held on March 4th-11th, 1985).

Petitioner submits that he was improperly prohibited from attacking the credibility of two important prosecution witnesses by showing possible bias or incentive to support the prosecution's case, in violation of his Sixth Amendment rights to a fair and impartial trial.

For the reasons stated above in addition to the Seventh Circuit's failure to analyze the other alleged constitutional violations raised in the district court, it is respectfully urged that this petition for certiorari should be granted.

Respectfully Submitted,

Stanley Tranowski

STANLEY E. TRANOWSKI - Petitioner
pro se.

Submitted by:

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Appendix

EDITOR'S NOTE

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT. (Re: Judgment Order 86-1649)

Appendix

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64pp

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APPENDIX

EXHIBIT "ONE" EXHIBIT "ONE"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO ILLINOIS

December 12, 19 86

Before

Hon. WALTER J. CUMMINGS, Cir. Judge

Hon. HARLINGTON WOOD, Jr. Cir. Judge

Hon. RICHARD D. CUDAHY, Cir. Judge

No. 86-1649	) Appeal from the
	) United States Court
UNITED STATES OF AMERICA,	) for the Northern
	) District of Illinois
Plaintiff-Appellee	) Eastern Division.
	)
vs.	) No. 76 CR 803
	) John P. Grady, Judge.
STANLEY EUGENE TRANOWSKI,	)
	)
Defendant-Appellant	)

O R D E R

On consideration of the petition for rehearing filed in the above-entitled cause by defendant-appellant on November 10, 1986, all

of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO ILLINOIS 60604

(Submitted October 9, 1986)*

October 31, 19 86 (UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 3

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. HARLINGTON WOOD, Jr. Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee,	) Appeal from the United States District Court for the Northern District of Illinois Eastern Division
No. 86-1649 v.	
STANLEY EUGENE TRANOWSKI, Defendant-Appellant,	) No. 76 CR 803
	) JOHN P. GRADY, Judge

O R D E R

Over twelve years ago, a man passed a counterfeit five-dollar bill at a Burger King in Chicago, Illinois. In 1977, a jury found Stanley Tranowski guilty of passing that bill in violation of 18 U.S.C., Sec. 472.

Tranowski was sentenced to six years imprisonment and has since fully served that sentence, including the portion during which he was released on parole. Tranowski has already been before us three times (p. 2) challenging the validity of his conviction. See United States v. Tranowski, No. 78-1272 (7th Cir. Sept. 25, 1978) (unpublished order) (affirming conviction on direct appeal), cert. denied, 440 U.S. 947 (1979). United States v. Tranowski, No. 79-1989 (7th Cir. June 7, 1982) (unpublished order) (affirming denial of motion for new trial based on newly discovered evidence); Tranowski v. United States, No. 85-1599, (7th Cir. Nov. 15, 1985) (unpublished order) ("Tranowski III") (vacating grant of new trial and remanding for further proceedings in light of a recent Supreme Court opinion) 1/

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34 (a). Fed. R. App. P.; Circuit Rule 14 (f). Defendant-Appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

In his fourth case before us, Tranowski is attempting to reverse the district court's denial of a new trial following our remand in Tranowski III. Without meaning to criticize Tranowski's preserverance in attempting to prove his innocence, we express our hope that the present case can help bring to a conclusion more than a decade of litigation.

I

On May 12, 1974, somebody passed a counterfeit five-dollar bill to a cashier at a Burger King restaurant in Chicago. A number of people chased after a man who was down the street from the restaurant holding a Burger King bag, and who, based on the cashier's description, was believed to be the passer of the bill; but they

---

1/ The facts of the underlying conviction were also before us in United States v. Tranowski, 659 F. 2d 750 (7th Cir. 1981), in which we reversed the conviction of Walter Tranowski, Stanley's brother, for allegedly committing perjury at Stanley's trial. We revisited that case in United States v. Tranowski, 702 F. 2d 668 (7th Cir. 1983), cert. denied, 463 U.S. 1217 (1984), in which we held that a retrial of Walter Tranowski would not constitute double jeopardy.

were unable to catch him. Subsequently, Stanley Tranowski was indicted for passing the counterfeit bill in violation of 18 U.S.C. Sec. 472. At trial, the cashier could not identify Tranowski as the perpetrator, nor could another employee, who chased the suspect, identify Tranowski as the man he chased. Only Peter McGhee, a thirteen-year-old boy who had joined in the chase, was able to identify Tranowski at the trial and he could only say that Tranowski was the man being chased; he had no first-hand knowledge regarding who passed the bill. The only other significant incriminating evidencepresented by the government at trial was evidence that Tranowski had previously purchased, under two different aliases, substantial quantities of the type of paper on which the countefeit bill was printed. A jury

---

1/ We note, though, that apparently the government never retried Walter.

found Tranowski guilty of the offense charged and, in March 1978, the court sentenced him to six years of incarceration. (p. 3)

In July 1980, Tranowski filed a motion under 28 U.S.C., Sec. 2255 in which he sought to have his sentence vacated based on various documents he had obtained through use of the Freedom of Information Act. The same judge who presided at the original trial considered the Sec. 2255 motion. In December 1984, the district court ordered that an evidentiary hearing be held, but only to consider one of the grounds raised by Tranowski in his motion. Following the hearing, the district court ruled, in March 1985, that the failure of the government to provide Tranowski with a Secret Service document, which indicated that McGhee had once followed the suspected passer of the bill to a house down the street from where Tranowski lived [2] considered along with other evidence favorable to Tranowski, raised sufficient doubt to entitle him to a new trial. However, in

making that determination the court applied a standard requiring that it find beyond a reasonable doubt that the undisclosed evidence would have no effect on the outcome of the trial. While the proper standard to apply was not clear at the time the district court made its ruling, the Supreme Court subsequently clarified what the proper standard to apply should have been. See United States v. Bagley, 105 S. Ct. 3375, 3384 (1985). Thus, in Tranowski III, we remanded the case for the applicayion of Bagley. In its original oral findings, the district court court had provided a relatively detailed discussion of the facts and applicable law. On remand, the district court only issued a brief order in which it purported to be applying the "reasonable probability" standard of Bagley in holding that the plaintiff was not entitled to a new trial. However, the court also stated "I believe it more likely than not that, had the report been disclosed at trial, the jury

would have concluded . . . .that officer Biswurm was mistaken as to what the witness Christopher (sic) McGhee had told him. Biswurm's statement, contained in the Cozza Report, was therefore not likely to have undermined the jury's confidence in McGhee's testimony identifying defendant as the bill passer." (Emphasis added).

(Page 4) In Brady v. Maryland, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad

---

2/ The Secret Service document is a one-page memorandum called the "Cozza Report." In October 1974 Robert Biswurm, a Chicago police officer who also worked part-time as a security guard at the aforementioned Burger King restaurant, called Special Agent Cozza. He told Cozza that McGhee had told Biswurm that McGhee followed the suspected countefeiter to the suspect's "residence" at 5157 West St. Paul Avenue in Chicago. (Tranowski's residence , however, is 5171 West St. Paul Ave). Cozza reduced the phone conversation to a memorandum which was forwarded to the agent handling the case. The Cozza report was never provided to Tranowski prior to his conviction, although the government had been ordered to provide Tranowski with all evidence favorable to him.

faith of the prosecution." 373 U.S. 84, 87 (1963). In United States v. Agur, the Court indicated that the standard for determining the materiality of evidence might vary according to the specificity of the request for evidence. 427 U.S. 97, 103-13 (1976). Bagley, however, made clear that the standard did not vary with the specificity of the request, 105 S. Ct. at 3384. Bagley also made clear the proper materiality standard to apply to the present case. "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." Id.; id. at 3385 (White, J.concurring); United States v. Jackson, 780 F. 2d 1305, 1309-10 (7th Cir. 1986). This is the same materiality standard that is applied to ineffective assistance of counsel claims. See Bagley,

105 S. Ct. at 3383-84; Strickland v. Washington 466 U.S. 668, 694 (1984); United States v. Driver, 798 F. 2d 248, 250-251 (7th Cir. 1986) A "reasonable probability" is less than "more likely than not" and more than "some conceivable effect on the outcome." See Strikland, 466 U.S. at 693.

The district court applied a "more likely than not" standard. This is not the proper standard. See id. However, Tranowski does not object that the court failed to apply the reasonable probability standard; instead his argument is that under the reasonable probability standard he is entitled to a new trial or, alternatively a beyond reasonable doubt standard should apply. Since plaintiff does not object that a "more likely than not" standard was applied and since as previously discussed, we wish to help bring this lengthy litigation to a close, we will not again remand this case to the district court for express application

of the "reasonable probability" standard. Cf. United States v. Wheeler, No. 85-2235, slip op. at 9 (7th Cir. Aug. 22, 1986). We also note that the government contends that in evaluating the effect of the Cozza Report we should not consider other allegedly undisclosed evidence that was the basis of claims dismissed by the district court but not appealed by Tranowski. We disagree. In determinining the materiality of undisclosed evidence "the omission must be evaluated in the context of the entire record . . . if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create reasonable doubt." Agurs, 427 U.S. at 112-13. Cf. Strickland, 46 U.S. at 695-96.

(p. 5)

Materiality is a mixed question of law and fact. Cf. Strickland, 466 U.S. at 698. In determining whether Tranowski has met the reasonable probability standard, we

defer to determinations made by the district court. United States v. Kehm, No. 84-3028, slip op. at 7 (7th Cir. Aug. 26, 1986), particularly factual findings, see Strickland, 466 U.S. at 698. The Cozza Report contains double hearsay indicating that McGhee followed a suspected person to a house other than Tranowski's. The district court found, however, that McGhee did not do so and that, instead, Officer Biswurm had reported the wrong address to Cozza. In any event, the district court found that the person McGhee followed was indeed Tranowski. Moreover, the court found McGhee's identification testimony to be highly credible. These findings, of course, are not conclusive on the issue before us ---disclosure of the Cozza Report would still have provided an additional means for attempting to impeach McGhee. We note the findings of the district court, though, because they indicate that the impeachment was less likely to have had a significant impact.

McGhee could have denied he ever made the statement to Biswurm and the prosecution could have reemphasized the certainty of McGhee's identification. The same is true of information that McGhee allegedly said he saw the suspect on Concocrd Avenue or Wabansia Avenue, especially since it was another person's speculation that the suspect lived on one of those streets, and, moreover, McGhee denied mak the alleged statements. That another person's palm print was found on one of the counterfeit bills is of little value in that money is generally handled by a number of people. Tranowski knew the important fact which is that his prints were not found on the money. Finally, we note a key fact that Tranowski trie to downplay. At trial, Tranowski was able to impeach McGhee on the ground that McGhee saw Tranowski buy newspapers at the drugstore where he worked on innumerable occasions yet McGhee failed to report this to the police nor did he initially recognize Tranowski as the man he had chased.

Since the undisclosed information is of limited value and since there was other impeachment evidence available at trial, we conclude that there was not a "reasonable probability" that disclosing the Cozza Report would have affected the outcome of the trial. Cf. Kehm, slip op. at 6-7. Our confidence in the outcome of the trial is not undermined.

Although two passages in his brief indicate that Tranowski is arguing that a different materiality standard should apply, that argument is not developed and, in any event, it is clear that "reasonable probability" is the proper standard. A different standard would apply if the government knew of perjured testimony and failed to inform Tranowski, see Kehm, slip op. at 6; United States v. Kaufmann, 783 F. 2d 783 F. 2d. 708, 709 (7th Cir. 1986), but no argument is raised by Tranowski. Tranowski also argues that the district court did not conduct (p. 6) "further proceedings" as required by our order in Tranowski III.

We diagree ---issuing the new judgment was adequatefurther proceedings. Tranowski also tries to argue that our remand in Tranowski III violated the clearly erroneous standard of Fed. R. Civ. P. 52(a). Even assuming he can raise such an argument at this time, see Chapman v. Pickett, No. 84-2842, slip op. at 12 n. 5 (7th Cir. Sept. 15, 1986), the argument is wrong. As discussed above, the materiality determination is a mixed question of law and fact. The ultimate determination is a legal question. Moreover, applying the wrong materiality standard is a purely legal question not subject to clearly erroneous review.

The judgment of the district court is

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	NO. 76 CR 803
v.	)	(80 C 3667)
	)	
STANLEY TRANOWSKI,	)	
	)	
Defendant	)	

ORDER

Pursuant to the mandate of the Court of Appeals filed on December 18, 1985, I have reconsidered defendant's motion for a new trial in light of United States v. Bagley ___U.S. ____ 105 S. Ct. 3375 (1985). I granted defendant a new trial in March of 1985 because I was unable to say beyond a reasonable doubt that that the verdict would have been the same had defendant known of the Cozza report at the time of trial. Applying the test of the Bagley case, I am unable to say that there is "....a reasonable probability that, had the (Cozza

report) been disclosed to the defense, the results of the proceeding would have been different." 105 S. Ct. at 3384. I believe it more likely than not that, had the report been disclosed at trial, the jury would have concluded, as I did after hearing testimony in March of 1985, that Officer Biswurm was mistaken as to what the witness Christopher McGhee had told him. Biswurm's statement (p. 2) contained in the Cozza report, was therefore not likely to have undermined the jury's confidence in McGhee's testimony identifying defendant as the bill passer.

Accordingly, defendant's motion for a new trial is denied, and the petition is dismissed.

DATED: APR. 14, 1986

ENTER: /s/ JOHN F. GRADY
United States District Judge

EXHIBIT "THREE" EXHIBIT "THREE"

JUDGMENT --WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO ILLINOIS 60604

November 15 1985

Before

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

STANLEY TRANOWSKI,	) Appeal from the
	) United States
Petitioner-Appellee	) District Court for
	) the Northern Dist-
v	) rict of Illinois
UNITED STATES OF AMERICA,	) Eastern Division
	) Nos. 80 C 3667 and
Respondent-Appellant	) 76 CR 803
	) Judge JOHN F. GRADY

This cause came before the Court for decision on the record from the United States District Court for the NORTHERN District of ILLINOIS , EASTERN Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment

of the said District Court in this cause appealed from be, and the same is hereby VACATED and the case is REMANDED, in accordance with the order of this Court entered this date.

EXHIBIT "THREE" EXHIBIT "THREE"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO ILLINOIS 60604

Submitted October 29, 1985*

November 15, 1985 (UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 35)

Before

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

STANLEY TRANOWSKI, Petitioner-Appellee	) Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 85-1599 vs.	)
UNITED STATES OF AMERICA, Respondent-Appellant	) Nos. 80-C-3667, 76 CR 803) JOHN F. GRADY, Judge

O R D E R

The judgment is vacated and the case is remanded for further proceedings consistent with United States v. Bagley, 105 S. Ct. 3375 (1985).

EASTERBROOK, Circuit Judge, concurring.

The outcome of this case is a foregone conclusion. The district judge has already found that the evidence at issue here -- a report (p. 2) stating that a witness had identified a certain address as the suspect's residence -- did not have any significant effect on proceedings, and that the witness's identification at trial was reliable. Given this finding, the fact that the defendant did not possess the report could not have affected the outcome of the trial. Under Bagley, therefore, the district court was neither required nor authorized to order a new trial. The court's order remand-

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a) Fed. R. App. P., Circuit Rule 14 (f). Petitioner-appellee has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

ing for further proceedings will consume the energy of the parties and the court without affecting the end to which this litigation must come. I would prefer to spare everyone these burdens, but I believe that it is no sin to permit the action to take a longer course, and therefore I concur in the judgment.

THE COURT: All right. Let's take about a five minute recess, and I will give you a decision.

(Brief recess.)

THE COURT: I would like to thank Mr. Echeles and Ms. Stowell for your very fine arguments. As in any difficult case, it is of great assistance to the Court to have able counsel present the opposing positions.

I do find this to be a difficult case, one that changes colors on me every time I look at it. I have (page 51) thought a lot about the test that should be applied, and maybe the reason that gives me difficulty is because the fact situation here is so unusual. If we had a routine fact situation, the question of what test should be applied probably would not even arise.

I reject the idea that it is my job to determine whether I have a reasonable doubt of the defendant's guilt based upon this new evidence. I just do not see that as a workable test. If that were the test, then if I had a reasonable doubt, there would be no point in having a retrial. I would discharge the defendant. If I did not have a reasonable doubt, then applying thesame sort of parallel analysis, I would deny a new trial since the test is whether I have a reasonable doubt, and if I do not have one, the defendant is not entitled to a new trial.

Neither of those results strikes me as proper. The defendant asked for and received a jury trial. The question of reasonable doubt in this case is for the jury. Therefore, it seems to me that the question of whether new evidence creates a reasonable doubt is necessarily a question as to whether that new evidence could

create a reasonable doubt in the mind of a jury.

It is my belief from the few authorities there are on this question that unless I can say beyond a reasonable doubt that no jury could reasonably entertain (p. 52) a reasonable doubt based on this new evidence that the petitioner is entitled to a new trial.

Now, in making that determination, I do not make the ultimate decision as to whether the new evidence is true or not. The question is: Assuming the truth of the new evidence, could it create a reasonable doubt when taken with all of the other evidence in the case ?

I am sure there are exceptions to that last statement. If the new testimony or evidence is highly unlikely, inconsistent with the other evidence in the case or otherwise facially flawed, surely the Court would be entitled to say that the evidence lacks a degree of credibility that would be sufficient to cause a jury to entertain a reasonable doubt.

But in those situations where the Court cannot say that; that is, where the new evidence may or may not be true, then I do not think it is for the Court to make that decision. And it is in that connection that the reasonable doubt test comes into play. Unless I can say beyond a reasonable doubt that this new evidence is untrue or even that if true a jury would regard it as something which does not create a reasonable doubt of the defendant's guilt, then I must award a new trial.

The question that we have to determine here ultimately is whether Peter McGhee, in fact, identified (p. 53) a person other than Stanley Tranowski as the passer of the bills in question. If he did, then notwithstanding his later identification of Stanley Tranowski as the passer of the bills, clearly, that other identification is something which a reasonable jury could find creates a reasonable doubt of the defendant's guilt.

The fact that the defendant Tranowski ordered paper which appears to be the paper on which these bills were printed and did so under circumstances which certainly indicate guilty knowledge is consistent with the proposition that he was the passer of these bills, but that is all you can say about it. There is no inconsistency between the proposition that Stanley Tranowski knowingly purchased the paper that was to be used in counterfeit bills or even that he was the counterfeiter, on the one hand, and the proposition that he did not pass these particular bills at the Burger King on May 12, 1974, on the other. That is why they are two separate crimes: Counterfeiting and uttering counterfeit currency. One can do one without the other.

The evidence of the paper purchase was highly relevant since it tended to make the proposition that Stanley passed the bills more

likely than it would have been without that evidence. But as Mr. Echeles correctly points out, without the identification by Peter McGhee (p. 54) there would be no case here. There would be no case for a jury. There would be merely suspicion. In fact, without the testimony of McGhee, there is not even a suspicion that Tranowski passed the bills since no one else besides McGhee identified him as the passer.

As I said a few moments ago, the ultimate question is whether McGhee identified someone other than Tranowski as the passer. We will never know that for sure, but it is to assess the likelihood of that fact that we look at what evidence is available.

The evidence that is available is the Cozza report of October 22, 1974. That is second-hand hearsay to the effect that McGhee did make such an identification. It is a report by Cozza as to what Biswurm told him, Biswurm, that McGhee had said.

When I entered an order granting this hearing, I said that the outcome would depend upon the significance of the information contained in this report. What did McGhee do ? The only way we can decide what McGhee did in regard to these two addresses on Saint Paul Street is to try to find out what he said he did, and the Cozza report is some evidence of what McGhee said he did.

If I were to decide this case myself, I would find that Biswurm is incorrect. I would find that Biswurm was not told by McGhee that McGhee knew that the (p. 55) suspected passer resided at 5157 West Saint Paul Avenue or that he had seen the suspected passer enter that address. Yet Agent Cozza quotes Biswurm as having reported that McGhee did say that, that the suspected passer resides at 5157 West Saint Paul Avenue.

Now, it is not clear just what Biswurm was told by McGhee, but he was told something that caused him to report to Cozza that the suspect resided at 5157 West Saint Paul Avenue.

Biswurm seemed to me to have a memory of this series of events that had been seriously eroded by time. It is not clear to me what he remembers at this late date. I was surprised that he could not even remember that he had testified in the related case five years ago. But I cannot find beyond a reasonable doubt that McGhee did not tell Biswurm that the suspect resided at 5157 West Saint Paul Avenue. I think it is highly likely that he did not say that, and even if he did say that, if I were making this decision myself, I would be inclined to say that even though he jumped to an erroneous conclusion about where Tranowski lived on the basis of having seen Tranowski approach what appeared to him to be this address

of 5157 Saint Paul, it was, nonetheless, Tranowski that he identified on each occasion, and it was Tranowski that he trailed to whatever addresses on whatever streets he might (p. 56) have trailed him to.

I would be inclined to make that finding on the basis of McGhee's unequivocal identification of the defendant here in this courtroom last week and at the original trial of this case. McGhee strikes me as an intelligent young man. There was an excellent opportunity to identify the defendant during the chase. It is true that the defendant has lived in the neighborhood for many years. He does frequent the place where McGhee worked. It is also true that Stanley Tranowski is a distinctive-looking individual. He is not someone who has what you might call an average appearance. I have no doubt in my mind that if Stanley Tranowski spent a lot of time around the neighborhood there, as he apparently did, that McGhee and

the other young people in the neighborhood would have recognized him.

Therefore, I would be inclined to conclude that whatever confusion may exist because of Biswurm's accurate or inaccurate report to Cozza this does not cast a doubt on McGhee's identification of Stanley Tranowski sufficient to warrant either his acquittal in this case of a bench trial or a new trial in the event I am to decide what a jury would do. I am not, however, as I understand the law, authorized to make the jury decision, to make the factual decision. If there were nothing to throw any (p. 57) doubt on McGhee's identification of Stanley Tranowski other than Biswurm's testimony or, rather, Cozza's report about the matter of residing at 5157 West Saint Paul Avenue, I might even then say that the petitioner has not made out a sufficient case for a new trial.

But there are other factors. The principal one is the failure of McGhee and of Fusello

and of Biswurm to notify the Secret Service that the bill-passer was coming into the drugstore practically every day between May and October of 1984. There are many possible explanations for that, and that is exactly the point. I cannot single out one and say that is the explanation.

One explanation is that McGhee really was not so sure, that McGhee did not say to Fusello "Isn't that the guy ?" or that Fusello did not say to Biswurm, "Biswurm, McGhee tells me that this suspect is coming in here every day." If they did not make any reports, that seems to me to shed some doubt on the proposition that McGhee had an opportunity to make a solid identification of the defendant on May 12th and remembers enough of the event to be able to identify that person again a short time later.

I would be inclined to chalk this whole thing up to incompetence on the part of the investigating authorities, and I say that quite

seriously. Biswurm seems to (p. 58) me to have been generally uninterested in the matter beyond talking to McGhee about it occasionally. Nobody from the Secret Service followed up on it with any consistency, and there may have been explanations for that in terms of the other demands upon their time. But it seems to me that the Secret Service just sat there and waited for reports to come in, and when reports did not come in, nothing happened.

That nobody checked out who lived at 5157 West Saint Paul Avenue in terms of physical description seems to me to be rather slipshod investigation. Here even now 11 years later, we do not know whether the Stanley Sikora who lived there at that time looked anything more like Mr. Tranowski than Peter McGhee does. Certainly if it turned out that there was a dead ringer for Stanley Tranowski who lived at that address, it would tend to make more likely the proposition that McGhee did indeed

follow the wrong person to that address. If no resident in that home looked remotely like Stanley Tranowski, it would tend to make that proposition less likely.

I think the question of McGhee's eyesight has been adequately explained. I attach no significance to that. I think that there is some mileage to be gained out of the fact that Tranowski continued coming into the drugstore and confronting McGhee frequently although I suppose that could be explained on the basis that Tranowski had a whole (p. 59) pack of pursuers holding him at bay that day, and he did not necessarily recognize all of them when he saw them later.

Biswurm's testimony at the Tranowski trial about McGhee taking him someplace on Wabansia Street and telling him he thought that may be where the suspect lived would certainly be an additional piece of evidence that a jury might find significant on the question of reasonable

doubt. I would not grant the petition on that basis, however, because I am not satisfied that the Government had that information at the time of Stanley Tranowski's trial. While Biswurm says that he told that to Cozza, my impression of Biswurm's recollection is not such that I would credit that testimony even in the absence of a denial by Cozza. I am not saying it is not true, but Biswurm, who could not even remember testifying five years ago, having a memory of that occurring 11 years ago, does not really impress me.

The Dolan-Sullivan report may have been available to the Government. I do not know whether it was or not, and I do not base today's decision on any failure to turn over that report. It is not clear to me to what extent that report impeaches McGhee in any event. There is nothing really impeaching about McGhee's identifying Tranowski as the bill-passer and thinking that Tranowski lived on Wabansia or

Concord or any other street in the neighborhood. It may well be that Tranowski walked on those (p. 60) streets and was seen by McGhee on those streets at some time.

The thing that distinguishes the Cozza report of October 22, 1974, is that that report puts into the mouth of McGhee, albeit by secondhand hearsay, the statement that the suspect lived at an address where Stanley Tranowski did not live.

A final consideration that is not unimportant to me is the fact that the Cozza report clearly should have been turned over by the Government. If it were arguable that that statement atttirbuted to McGhee, if made, were not impeaching, I might reach a different result, but it clearly is impeaching, if made and if made in the circumstances which the petitioner can argue with some plausibility that it was made.

All the Government had to do to eliminate this whole controversy that has now raged up and down the courts for the last five years and will undoubtedly go on for another five is to turn over Cozza's report of October 22, 1974, which was just as clearly Brady material as anything could be. I know that Ms. Stowell had nothing to do with the failure to turn it over. I know that the United States Attorney's office had nothing to do with the failure to turn it over. Somebody, intentionally or unintentionally, failed to turn it over. It does not even make (p. 61) any difference whether it was intentional or unintentional. It should have been turned over. It was not.

I cannot and will not say that I know beyond a reasonable doubt what would have occurred in the minds of the jury if it had been turned over. Therefore, I have concluded that the petition must be allowed. The petitioner will be granted a new trial.

Now, it may well be that the Government desires to appeal today's ruling. I would be the last to say that my decision is not one about which reasonable minds could differ. Quite frankly, I am not anxious to retry this case only to find out that we should not have had the re-trial. So I would welcome an appeal of today's order by the Government so that we know for sure that we are not simply wasting time when we embark upon the second trial of Stanley Tranowski.

Is there anything else we should do today ?

MS. STOWELL: Your Honor, may I just say one thing ? Your Honor said an important part of your decision was the fact that no reports were made by Pusello, Piswurm, and McGhee, and the Secret Service. There was a document admitted into evidence. I do not have the one with the sticker. I think I gave it to Mr. Martinez. But it is a report dated August 22nd 1974, by Agent Clark. On that report on page

3 is a paragraph - - (p. 62) And I am not arguing with your Honor.

THE COURT: Right.

MR. STOVALL: I just want you to understand that. I just want to call it to your attention that:

"On August 20th, 1974, Mr. Clark telephoned Robert Fusello at Mor-Clare, and he told me that the suspect had started buying papers at the store again on or about August 10th or 11th and that he was coming in around 5:30 or 6:00 p.m."

So to the extent that has any bearing on your Honor's decision, I wanted you to be aware of that.

THE COURT: That contrasts with McGhee's testimony that Stanley Tranowski started coming in again on a daily basis about two weeks after May 12th. Actually, if you take the Fusello report in August, it tends to be evidence favorable to Tranowski because if, in fact, Tranowski was coming in for two months before

Fusello finally woke up to the fact that this was the fellow that McGhee had identified, it tends to throw doubt on whether McGhee, in fact, had previously identified him.

MR. SCHELLS: It is my view, your Honor having ordered a new trial, that your Honor should set a date for the new trial, tentative or otherwise. Maybe the Government will come in - -

THE COURT: Is there any doubt that this is an (p. 63) appeable order ?

MS. STOWELL: Your Honor, I do not think there is any doubt. I have not discussed it anybody downstairs. That is the reason I do not want to take an adamant position as to what to do.

THE COURT: I think, in fact, under the amendments to the criminal code that the grant of a new trial by the Court is appealable by the Government.

Ms. STOWELL: It sounds right.

THE COURT: You might take a look at that.

Ms. STOWELL: I will.

Mr. ECHELES: I did not mean to interrupt the Court. This is a 2255 petition.

THE COURT: I understand that.

Mr. ECHELES: At the risk of Stanley disagreeing with me, although we have had no disagreements, nowit is an appealable order. It is different from the grant of a new trial on trial, on a jury verdict on trial.

THE COURT: This is a civil case.

Mr. ECHELES: It is a civil case.

I have to agree with Ms. Stowell. I have to say to the Court in response to the Court, as I have to Mr. Tranowski, you Honor having ruled on a 2255 petition, it being civil case, in my view, it is an appealable order.

THE COURT: But you think that perhaps --

MR. SCHELLS: I think now your Honor has no papers or documents. There is no notice of an appeal.

THE COURT: I should set a new trial at this point.

MR. SCHELLS: That is my reaction. You cannot say new trial and let it be in limbo. You have to say new trial. He now starts the speedy trial, I suppose. I do not know the overlay on that one, but I think you have to set a tentative date. That would be my suggestion, your Honor.

THE COURT: Well, let's regard this then for purposes of that supposition as being the date on which the Speedy Trial Act is figured, and we have what, 70 days from that ?

MS. STOWELL: Yes, your Honor.

THE COURT: Well, how about we set a new trial on Monday, May 20th ? That just barely squeaks in under the 70 days.

Let's do a little better than that. Let's set it for Monday, May 6th.

Now, by that time you will have filed your appeal, and you will have had a chance to look into the speedy trial question. Surely, there is some exclusion, if only the one that has to do with the interests of jus- (p. 65) tice that would apply while an appeal is pending on the 2255.

MS. STOWELL: We will work it out.

THE COURT: Very good.

MS. STOWELL: Thank you, your Honor.

THE DEFENDANT: Your Honor ?

MS. STOWELL: Your Honor, could I have the exhibits ?

THE COURT: Yes, I will give those back.

Mr. Tranowski ?

THE DEFENDANT: I would like to thank the Court's indulgence for the entire time that the Court has spent in the conduct of this trial or this hearing.

THE COURT: Well, you are entirely welcome, and you really do not have to thank me because that is what I get paid for. I am a civil servant, and I am just doing my job.

THE DEFENDANT: All right.

MR. ECHELES: Judge, I did not get to say thanks.

I remember when Judge Barnes was sitting. You may remember Judge Barnes.

THE COURT: Yes, indeed I do.

(Brief off-the-record discussion.)

(Which were all the proceedings had in the above-entitled cause on the day and date aforesaid.)

Transcript for the record of proceedings in the above entitled matter.

/S/ LAURA M. BRENNAN 3-16-85
Laura M. Brennan Date
Official Court Reporter

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO ILLINOIS 60604

Argued September 21, 1978

September 25, 19 78

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. WILBUR F. PELL, Jr. Circuit Judge

Hon. WILLIAM J. BAUER, Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee vs. STANLEY TRANOWSKI, Defendant-Appellant	) Appeal from the United States District Court for the Northern District of Illinois. Eastern Division. No. 76 CR 803) John F. Grady, Judge

No. 78-1272

O R D E R

After a jury trial, defendant was convicted of passing a counterfeit $5 bill to Burgher King cashier Michelle Bonsanto on May 12,1974, in Chicago, Illinois, in violation of 18 U.S.C. Sec. 742. He received a six-year sentence.

After hearing oral argument only from defendant's appointed counsel, we affirmed this conviction from the bench.

Defendant first argued that the Government should not have been permitted to introduce into evidence 27 photographically identical counterfeit bills which had been passed at various places in Chicago between May and October 1974. At the oral argument, defendant's counsel admitted that under 18 U.S.C., Sec. 472 the United States had to prove criminal knowledge or intent to defraud. The additional countrfeit bills were some evidenceof such intent. These bills were linked to defendant because they were printed on paper chemically identical to the Gilbert Resource bond paper defendant had bought under false names for a fictitious business in May and June 1973. One of the additional bills bore a "gilbert" watermark. The defendant had been observed by a United States Secret Service agent

delivering the first batch of paper to a store leased by his brother in Chicago. The evidence of the additional counterfeit bills, together with the evidence of the surreptitious purchases of paper of the same kind and brand used in the bills, was admissible both as tending to establish defendant's guilty knowledge and also to show his plan to manufacture counterfeit bills, thus tending to show he knowingly passed the bill in question. The jury was instructed that this evidence was received only "for whatever bearing it may have on the question of whether the defendant passed the particular note which is the subject of the indictment." Since this material had a "tendency to make the existence of an element of the crime charged more probable than it would be without such evidence," it was properly received in evidence. United States v. Fairchild, 528 F. 2d 185, 188-189 (7th Cir. 1975), certiorari denied, 425 U.S. 942; United States v. Kimbrough, 481 F. 2d 421 (5th Cir. 1973),

Defendant also contended that he was not identified as the person who passed the counterfeit bill. However, David Jochum, the manager of the Burger King Restaurant where the counterfeit bill was passed, unsuccessfully chased a fleeing white man answering cashier Michelle Bonsanto's description of him just after the counterfeit bill was passed to her. At a photo spread on January 28, 1975, Jochum picked out a 6-year-old picture of defendant's brother as the individual "most closely resembling" the person he had chased instead of a 27-year-old picture of defendant. The recent picture of the brother resembled defendant at the time of the chase more than the 27-year-old picture of the defendant himself. Additionally, Peter McGhee, an employee of the drug store frequently patronized by defendant, helped the Burger King manager chase the man who fled after the counterfeit bill was passed and positively identified defendant as the subject of the chase. Finally, McGhee's employer saw defendant in the drug

store just before the event in question, thus destroying defendant's alibi that he was attending a wake. Therefore, we conclude that defendant was sufficiently identified as the person passing the counterfeit bill.

Conviction affirmed.